

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SOUTHWEST ENVIRONMENTAL, INC., ) Case No. 07cv0642-WQH (BLM)

v. Plaintiff, ) **ORDER CONTINUING MANDATORY  
SETTLEMENT CONFERENCE**

SK AMERICA, INC., et al., )

Defendants. )

AND RELATED COUNTERCLAIMS,  
CROSS-CLAIMS AND THIRD-PARTY  
COMPLAINT )

Due to a conflict on the Court's calendar, the Mandatory Settlement Conference scheduled for October 26, 2007 is hereby continued to October 29, 2007 at 10:00 a.m. The conference will be held in the chambers of Magistrate Judge Barbara L. Major located at 940 Front Street, Suite 5140, San Diego, CA 92101. All discussions at the Mandatory Settlement Conference will be informal, off the record, privileged, and confidential. Counsel for any non-English speaking party is responsible for arranging for the appearance of an interpreter at the conference.

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1       a. **Personal Appearance of Parties Required:** All parties,  
 2 adjusters for insured defendants, and other representatives of a party  
 3 having full and complete authority to enter into a binding settlement,  
 4 as well as the principal attorneys responsible for the litigation, must  
 5 be present in person and legally and factually prepared to discuss  
 6 settlement of the case. Counsel appearing without their clients  
 7 (whether or not counsel has been given settlement authority) will be  
 8 cause for immediate imposition of sanctions and may also result in the  
 9 immediate termination of the conference.

10       Unless there are extraordinary circumstances, persons required to  
 11 attend the conference pursuant to this Order shall not be excused from  
 12 personal attendance. **Requests for excuse from attendance for**  
**extraordinary circumstances shall be made in writing at least three (3)**  
**court days prior to the conference.** Failure to appear in person at the  
 15 Mandatory Settlement Conference will be grounds for sanctions.

16       b. **Full Settlement Authority Required:** In addition to counsel  
 17 who will try the case, a party or party representative with full  
settlement authority<sup>1</sup> must be present for the conference. In the case  
 19 of a corporate entity, an authorized representative of the corporation  
 20 who is not retained outside counsel must be present and must have

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22       <sup>1</sup> "Full settlement authority" means that the individuals at the settlement  
 23 conference must be authorized to explore settlement options fully and to agree at that  
 24 time to any settlement terms acceptable to the parties. Heileman Brewing Co. v. Joseph  
Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have "unfettered  
 25 discretion and authority" to change the settlement position of a party. Pitman v.  
Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring  
 26 a person with unlimited settlement authority to attend the conference contemplates that  
 27 the person's view of the case may be altered during the face to face conference. Id.  
 28 at 486. A limited or a sum certain of authority is not adequate. See Nick v. Morgan's  
Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

1 discretionary authority to commit the company to pay an amount up to the  
2 amount of the Plaintiff's prayer (excluding punitive damages prayers).  
3 The purpose of this requirement is to have representatives present who  
4 can settle the case during the course of the conference without  
5 consulting a superior. Counsel for a government entity may be excused  
6 from this requirement so long as the government attorney who attends the  
7 Mandatory Settlement Conference (1) has primary responsibility for  
8 handling the case, and (2) may negotiate settlement offers which the  
9 attorney is willing to recommend to the government official having  
10 ultimate settlement authority.

11       c. **Confidential Settlement Statements Required:** No later than  
12 October 22, 2007, the parties shall submit directly to Magistrate Judge  
13 Major's chambers confidential settlement statements no more than five  
14 (5) pages in length. **These confidential statements shall not be filed**  
15 **or served on opposing counsel.** Each party's confidential statement must  
16 include the following:

17                 (i) A brief description of the case, the claims and/or  
18 counterclaims asserted, and the applicable defenses or position  
19 regarding the asserted claims;

20                 (ii) A specific and current demand or offer for settlement  
21 addressing all relief or remedies sought. If a specific demand or offer  
22 for settlement cannot be made at the time the brief is submitted, then  
23 the reasons therefore must be stated along with a statement as to when  
24 the party will be in a position to state a demand or make an offer; and

25                 (iii) A brief description of any previous settlement  
26 negotiations, mediation sessions, or mediation efforts.

27       General statements that a party will "negotiate in good faith" is  
28 not a specific demand or offer contemplated by this Order. It is

1 assumed that all parties will negotiate in good faith.

2       d. **Requests to Continue a Mandatory Settlement Conference:** Any  
3 request to continue the Mandatory Settlement Conference or request for  
4 relief from any of the provisions or requirements of this Order must be  
5 sought by a **written ex parte application**. The application must (1) be  
6 supported by a declaration of counsel setting forth the reasons and  
7 justifications for the relief requested, (2) confirm compliance with  
8 Civil Local Rule 26.1, and (3) report the position of opposing counsel  
9 or any unrepresented parties subject to the Order. **Absent extraordinary**  
10 **circumstances, requests for continuances will not be considered unless**  
11 **submitted in writing no less than seven (7) days prior to the scheduled**  
12 **conference.**

13       **If the case is settled in its entirety before the scheduled date of**  
14 **the conference, counsel and any unrepresented parties must still appear**  
15 **in person, unless a written joint motion confirming the complete**  
16 **settlement of the case is submitted no less than twenty-four (24) hours**  
17 **before the scheduled conference.**

18       **IT IS SO ORDERED.**

19 DATED: September 25, 2007

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21       BARBARA L. MAJOR  
22       United States Magistrate Judge

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25 COPY TO:

26 HONORABLE WILLIAM Q. HAYES  
27 U.S. DISTRICT JUDGE

28 ALL COUNSEL